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OFFICE OF PETITIONS

In re Application of

Scheinberg, et al.

Application No. 09/721,864

Filed: November 24, 2000

Attorney Docket No. D6126

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DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed April 27, 2009.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

This application was held abandoned on March 24, 2009, after it was believed that a proper response was received to the Notice of Allowance and Issue Fee Due mailed December 23, 2008, which set a statutory period for reply of three months from its mailing date. A Notice of Abandonment was mailed April 17, 2009.

Petitioner maintains that a proper and timely response to the Notice of Allowance and Issue Fee Due was transmitted via facsimile on March 20, 2009. As evidence of the same, petitioner provides a copy of the transmittal containing a certificate of transmission dated March 20, 2009, and a copy of the petitioner's "Fax Journal Report" indicating that two pages were transmitted to the USPTO facsimile (571) 273-2885 on March 20, 2009.

Petitioner's argument has been considered and is persuasive. Section 711.03(c) of the MPEP provides, in pertinent part, that:

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into

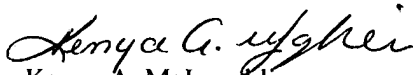
PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

A review of the copy of the fee transmittal sheet reveals that it contains a certificate of mailing dated March 20, 2009, that is signed by Feroza Yesmin, but that petition is signed by Benjamin Aaron Adler. The certificate of transmission indicating that fee transmittal sheet and credit card form was transmitted on March 20, 2008, is corroborated by the "Fax Journal Report" indicating that two pages were transmitted to the USPTO facsimile (571) 273-2885 on March 20, 2009. Petitioner properly used the protections offered by 37 CFR 1.8 and is, therefore, entitled to assert that the fee transmittal and credit card form transmitted March 20, 2009, is timely and complete by virtue of the certificate of transmission dated March 20, 2009, contained thereon. The petition is granted, accordingly.

The issue fee is noted as being paid on April 27, 2009.

Further inquires regarding this decision may be directed to the undersigned at (571) 272-3222.

The application file is being forwarded to the Office of Data Management for further processing.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions